

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

PERFORMANCE PRICING, INC.,

Plaintiff,

v.

GOOGLE INC., AOL LLC, MICROSOFT
CORPORATION, YAHOO! INC.,
IAC SEARCH & MEDIA, INC., and
A9.COM, INC.,

Defendants.

Case No. 2:07-cv-432 (LED)

JURY TRIAL DEMANDED

**Plaintiff's Proposed Terms and Claim Elements
for Construction Pursuant to P.R. 4-1**

Pursuant to Patent Rule 4-1 of the United States District Court for the Eastern District of Texas, Plaintiff provides this Proposed Terms and Claim Elements for Construction to Defendants. Consistent with Patent Local Rule 4-1(b), Plaintiff reserves the right to supplement, revise, and otherwise finalize this list to facilitate the preparation of a Joint Claim Construction and Prehearing Statement.

Additionally, Plaintiff's investigation is continuing and the following disclosure is based on the information available to Plaintiff at this time. Thus, Plaintiff reserves the right to supplement or modify these Proposed Terms and Claim Elements for Construction as new information, through discovery or other investigation, becomes available.

The following is a list of claim terms, phrases, or clauses that Plaintiff contends should be construed by the Court:

- “price determining activity”
- “product”
- “first” and “second”
- “auction”

Terms and phrases found only in the preambles of the claims need not be construed because the steps of the method claims are complete without reference to the preambles. All of the other claim terms in the asserted claims can be understood by the jury consistent with their ordinary meaning.

Plaintiff reserves the right to offer constructions of terms identified by the Defendants.

Dated: November 3, 2008

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF
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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument was served on all counsel of record by E-mail and/or Federal Express this 3rd day of November, 2008.

/s/ Christin Cho
Christin Cho